

MINUTES

REGULAR MEETING OF THE NEWTON CITY COUNCIL – JANUARY 19, 2010

The regular meeting of the Newton City Council was held on Tuesday, January 19, 2010 at 7:00 p.m. in the Council Chambers at City Hall with the following present: Mayor Robert A. Mullinax and Council Members Wayne Dellinger, Mary Bess Lawing, Tom Rowe, Bill Lutz, Robert Abernethy, Jr., and Mayor Pro Tem Anne Stedman.

Also in attendance were City Manager Todd Clark, City Attorney Larry Pitts, City Clerk Beunice R. “Bootsie” Roberts, members of the Management Team, City Department Heads, and Jeremy Petty, DNDA Chairperson.

ITEM 1. CALL TO ORDER – ROBERT A. MULLINAX:

Mayor Mullinax called the meeting to order and welcomed everyone to the meeting.

ITEM 2. OPENING – COUNCIL MEMBER MARY BESS LAWING:

Council Member Mary Bess Lawing gave the invocation and led the audience in the Pledge of Allegiance.

Mayor Mullinax paused to recognize Pack 903 from First Presbyterian Church in Newton and Pack Leaders George Buff, Jeremy Hill, and John Miles who were in the audience as a citizenship badge requirement.

Mayor Mullinax also welcomed Cole Yoder, son of Fire Chief Kevin Yoder, to the meeting.

Mayor Mullinax thanked each for attending and complimented the scouts of Pack 903 for their strong response to the Pledge of Allegiance.

ITEM 3. APPROVAL OF MINUTES FROM THE JANUARY 5, 2010 REGULAR COUNCIL MEETING:

A motion was made by Council Member Mary Bess Lawing, seconded by Mayor Pro Tem Anne Stedman, and unanimously adopted to approve the minutes of the January 5, 2010 meeting as submitted.

ITEM 4. CONSIDERATION OF CONSENT AGENDA ITEMS:

Mayor Mullinax encouraged the citizens of Newton to respond to the 2010 Census when approached. He said that numbers are very important when money is requested. He also thanked Council Member Mary Bess Lawing for replacing him on the Unifour Air Quality Oversight Committee (UAQOC).

A motion was made by Mayor Pro Tem Anne Stedman, seconded by Council Member Tom Rowe, and unanimously adopted to approve the Consent Agenda Items as submitted.

A. Sewer Adjustments – January 2010:

The adjustment is recommended as a result of a water leak at the service address or a pool fill up.

Account Number	Name	Service Address	Adjustment Period	Amount of Adjustment
33000060.0096	Eustorgio Garcia	1206 N Shipp Ave	June – Aug 2009	\$36.69
65000180.0089	Jefferson Herr	658 Overlook Dr	Jul – Aug 2009	\$324.72
51000120.0098	Ray Kaylor	2023 N College Ave	Oct 2009	\$29.32
33001440.0095	Tony Wolfe	204 W 18 th St	Oct 2009	\$42.85

B. Tax Releases – December 2009:

The reason for the releases is annotated beside the name.

Tax Year	Tax Release Number	Name	Reason	Amount of Release
2009	11	Alltel Communications	Value did not change as rebate intended	\$494.36
2009	12	Catawba Valley Primary	Taxpayer supplied depreciation schedule of assets with amended return	\$177.82
2006	13	Catawba Valley Primary	Taxpayer supplied depreciation schedule of assets with amended return	\$149.42
2007	14	Catawba Valley Primary	Taxpayer supplied depreciation schedule of assets with amended return	\$155.68
2008	15	Catawba Valley Primary	Taxpayer supplied depreciation schedule of assets with amended return	\$163.11
2009	16	Trivette, John	Owner tagged vehicle	\$16.65

C. Tax Refund – December 2009

The reason for the refund is annotated beside the name.

Tax Year	Tax Refund Number	Name	Reason	Amount of Release
2007	*2	De Lage Landen Operational Services, Inc.	Equipment was listed and paid for by two separate entities.	\$41,827.47

*De Lage Landen Operational Service, Inc. listed and paid for leased equipment located at 1633 Fisher Court (Flowers Baking Company). The same equipment was listed and paid for by Flowers Baking Company.

Should you have any questions or need clarification, please notify. Refunds are submitted as required by NCGS § 105-381(b).

- D. **Consideration of Annual Fire Department Membership Roster and Department Certification for Year 2010**
- E. **Consideration of a Proclamation for the City of Newton's Partnership with the U.S. Census Bureau for the 2010 Census**
- F. **Appointment of Council Member Mary Bess Lawing to the Unifour Air Quality Oversight Committee (UAQOC)**

ITEM 5. COMMENTS FROM THE PUBLIC: (PERSONS WANTING TO MAKE A PUBLIC COMMENT ON NON-AGENDA ITEMS ARE REQUESTED TO SIGN IN WITH THE CITY CLERK PRIOR TO THE MEETING):

Mayor Mullinax asked if there was anyone in the audience who wanted to speak on a non-agenda item.

Ms. Marsha Howard of St. Pauls Church Road came before the Council to provide information on a nuisance situation that has developed on property located off St. Pauls Church Road near her property.

Ms. Howard reported that she was representing her parents, for property she manages in the St. Pauls Church Road area (1755 Old St. Pauls Church Road). She said that next door to her property (1735 Old St. Pauls Church Road) and off a private road, that there is trash, junk cars and equipment, refrigerators, old tires, and other junk items. She said that the nuisance cannot be seen from the road, but it is there and it is a bad situation. Ms. Howard distributed pictures to the Council to give a visual of the subject area and added that in the summer months, snakes, rats, etc. are on the property. Ms. Howard asked for help from the Council with this matter.

Mayor Mullinax asked Ms. Howard if she had reported the situation to the City's Planning Department, which Mrs. Howard said she had not. Ms. Howard said that she did contact the Police Department and an officer came out to investigate. Ms. Howard said that the Police Officer informed her that there was not a lot that could be done about the situation, but according to her research, seventeen sub-sections of the city ordinance had been violated.

Ms. Howard said that tonight was her first attempt to seek help from the Council. Mayor Mullinax informed Ms. Howard that he would have the Planning Department to do an investigation and if there was nothing that the City could do, that she would have to handle the situation privately.

Ms. Howard said that she is thinking of the safety factor involved, that she feels this nuisance is a health hazard for the children who might play in this area. She said that the refrigerators have the doors opened and a child could be playing inside of it and

become trapped inside. She said that the smell is awful and in the summer, there is a strong sewage odor.

Council Member Robert Abernethy, Jr. asked Ms. Howard if she had talked to the property owners about the situation. Ms. Howard said that the property owner is aware of her complaints and the situation.

Mayor Mullinax said that the City would have someone to investigate the situation and make a determination to see if the problem is in violation of the City's ordinance. He said that if the problem is in violation of City the ordinance, then the City will do something to resolve the problem; if not, Ms. Howard has a private remedy as a citizen to bring action against a citizen to abate a nuisance. Mayor Mullinax informed Ms. Howard that she did the right thing by bringing the matter to the City, and advised her to contact the City's Planning Department staff.

Mr. Jim Granny asked questions concerning the financial borrowing, but was instructed to present his questions when that particular item is discussed.

ITEM 6. **OLD BUSINESS:**

None.

ITEM 7. **NEW BUSINESS:**

A. DNDA Report – 4th Quarter and Year-End 2009, Jeremy Petty, DNDA Chairperson:

Mayor Mullinax welcomed Jeremy Petty, DNDA Chairperson, to the meeting and asked him to make his presentation.

Mr. Petty gave a detailed presentation of the Downtown Newton Development Association's 2009 Adopted Work Program. Mr. Petty gave a brief summary of the four committees that work diligently to keep the DNDA Program vibrant and active. The committees are:

- Design Committee: Purpose is to enhance the visual quality of the downtown. He mentioned how the committee walked the downtown streets to see what could be done to beautify the area, as well as, hosted a visit by the National Park Service to see if the downtown area could get on the historic registry. Mr. Petty said that there were several areas that got the "thumbs up."
- Economic Restructuring Committee: Purpose is to strengthen the existing economic assets of the business district while diversifying its economic base. Mr. Petty said that ElectriCities sponsored a commercial marketing study, which was very helpful. Mr. Petty complimented Rob Powell, Commercial Development Coordinator, who has been a very valuable asset to the DNDA and City. He said that Mr. Powell's work and his office have been a recognized place in which to guide people in their search for property in the downtown area. He said that the Commercial Development position was an excellent decision of the Council.
- Organization Committee: Purpose is to build partnership to create a consistent revitalization program. Mr. Petty said that the DNDA has developed a mission statement and membership policy statement for the association. He said that the DNDA has established a good working relationship with other groups in the downtown area and with the City. He mentioned several activities they have helped to

volunteer their services. He said that the accountability for volunteering is very good. Mr. Petty said that there have been some studies done on the DNDA downtown boundary and that the committee felt it best to wait for a future study in the North Newton area.

- Promotion Committee: Purpose is to reestablish the downtown as a compelling place for shoppers, investors and visitors. Mr. Petty said that the Promotion Committee has been the busiest committee, especially with the success of the “2010 Historic Calendars,” and that the most visible project was the “Callahan Café” renovation project. He said that 275 volunteer hours were used to renovate the café. The renovation efforts of Callahan and others generated local, statewide, and out-of-state media coverage. He said that it interested visitors to come see and eat at Callahan’s. He said that renovating Callahan’s Cafe gave visitors a reason for Newton to be their destination.

Mr. Petty said that the Downtown Newton Development Association would hold its first half-day planning workshop on February 20, 2010.

Mayor Mullinax said that the DNDA does an excellent job and invited Mr. Petty and the DNDA to the City Council Annual Workshop on February 18 and 19, 2010 at City Hall. He said that the Council supports DNDA’s efforts.

Council Member Mary Bess Lawing echoed the Mayor’s sentiments, and encouraged the association and Council to help promote the Historic Museum.

Mayor Mullinax said that he has spoken to Melinda Herzog, Museum Director, and was informed that because of the economy, more people are visiting the museum, and that is good.

Council Member Robert Abernethy, Jr. asked which committees did the DNDA assists for festivals and special events.

Mr. Petty said that the DNDA helped city committees with their events during Halloween and the holidays, as well as, the Newton Merchants Group with their events. He said that the DNDA are mending fences with the other groups in the downtown and are in the process of working with the Newton Merchants Group to provide volunteers for the 2010 MayFest event.

Mayor Pro Tem Anne Stedman said that she is excited about the new energy from the cooperative efforts of all the groups working together.

B. Consideration of a Resolution authorizing the financing of certain equipment, materials, and services; and a Resolution calling for a Public Hearing on February 2, 2010:

City Manager Todd Clark said that the Council is being requested to consider a resolution to authorize the financing of certain equipment, materials, and services, and asked Finance Director Serina Hinson to make her presentation.

Finance Director Serina Hinson said that the Staff is requesting to finance certain equipment and improvements, which were approved by the Council during the Fiscal Year 2009-2010 Budget. She said that the estimated cost of the acquisitions and improvements

is \$1,033,400, which includes \$820,400 from the General Fund and \$213,000 from the Electric Fund.

Finance Director Hinson said that the Finance Department Staff would solicit quotes from various financial institutions to borrow the funds. She said that a public hearing on the borrowing is also being requested to be held on February 2, 2010.

There was a brief discussion on the equipment, materials, and services included in the financing from the General Fund, the Water and Sewer Fund, and the Electric Fund, as to several questions about purchasing versus leasing, or a "pay as you go method." There was some discussion on the replacement vehicles, as well.

Council Member Wayne Dellinger said that the ADA signs should not be included in the borrowing process.

City Manager Clark said that the \$5,900 for the ADA signs could be removed if it is the Council's wishes. It was the consensus of the Council to remove the ADA signs from the borrowing, which would change the borrowing amount to \$1,027,500.

Council Member Bill Lutz asked if the figures were conservative, which Finance Director Hinson said that the figures were estimates, but still conservative.

Mr. Jim Granny from the audience said that he had a suggestion that he would like to share for future thought. He asked if the Council ever thought about contracting, the lawn service out, since the borrowing included a riding mower.

Council Member Wayne Dellinger said that the Staff tried contracting the lawn service several years ago.

City Manager Clark said that there was a person contracted to mow Southside Cemetery, but changes were made due to budget cuts, but there is no reason why contracting this service could not be tried again in the future.

There being no further discussion on the borrowing, Council Member Tom Rowe introduced a Resolution making certain findings and determinations regarding the financing of vehicles, equipment and improvements pursuant to an installment financing agreement and requesting the Local Government Commission to approve the financing arrangement.

A motion was made by Mayor Pro Tem Anne Stedman, seconded by Council Member Mary Bess Lawing, and unanimously adopted to approve a Resolution authorizing the City Manager and Finance Director to act on behalf of the city and to authorize the filing of an application with the North Carolina Local Government Commission.

Council Member Robert Abernethy, Jr. introduced a Resolution calling for a public hearing in connection with an installment financing agreement for financing certain vehicles, equipment, and improvements.

A motion was made by Council Member Bill Lutz, seconded by Council Member Mary Bess Lawing, and unanimously adopted to approve a Resolution calling for a public hearing in connection with an installment financing agreement for financing certain vehicles, equipment, and improvements.

RESOLUTION #4-2010

RESOLUTION MAKING CERTAIN FINDINGS AND DETERMINATIONS REGARDING THE FINANCING OF VEHICLES, EQUIPMENT AND IMPROVEMENTS PURSUANT TO AN INSTALLMENT FINANCING AGREEMENT AND REQUESTING THE LOCAL GOVERNMENT COMMISSION TO APPROVE THE FINANCING ARRANGEMENT

BE IT RESOLVED by the City Council of the City of Newton, North Carolina (the “City”) as follows:

Section 1. The City Council does hereby find and determine as follows:

(a) There exists in the City a desire to finance certain vehicles, equipment and improvements to City property (the “Project”) as approved in the City’s Fiscal Year 2010 budget.

(b) After due consideration, the City has determined to enter into an installment financing agreement (the “Agreement”) in an aggregate principal amount not to exceed \$1,027,500 to finance the costs of the Project.

(c) The City will enter into the Agreement with the lending institution having the most favorable interest rates and terms acceptable to the City (the “Bank”), pursuant to which Agreement said Bank will advance to the City amounts sufficient to pay the costs of the Project, and the City will repay the advancement in installments, with interest (the “Installment Payments”).

(d) In order to secure its obligations under the Agreement, the City will execute and deliver a deed of trust or security agreement granting a lien on, or security interest in, all or a portion of the Project.

(e) It is in the best interest of the City to enter into the Agreement and related security documents in that such transaction will result in providing financing for the Project in an efficient and cost effective manner.

(f) Entering into the Agreement is preferable to a general obligation bond and revenue bond issue for such purpose.

(g) It has been determined by the City Council that the cost of the financing through an installment financing agreement is reasonable comparable to the costs of issuing general obligation bonds or other available methods of financing and is acceptable to the City Council.

(h) Counsel to the City will render an opinion to the effect that the proposed undertaking as described above is authorized by law and is a purpose for which public funds may be expended pursuant to the Constitution and laws of the State of North Carolina.

(i) The debt management policies of the City have been carried out in strict compliance with law, and the City is not in default under any obligation for repayment of borrowed money.

(j) No increases in taxes are anticipated in order to pay the Installment Payments under the Agreement.

Section 2. The City Council hereby authorizes and approves the filing of an application with the North Carolina Local Government Commission for approval of the agreement and requests such Commission to approve the agreement and the proposed financing in connection therewith. The City Council further authorizes the City Manager and/or Finance Director of the City of Newton to act on behalf of the City in filing the application, executing the proposed financing contract and other actions not inconsistent with this resolution.

Section 3. This resolution shall take effect immediately upon its passage.

Upon motion of Council Member Anne Stedman, seconded by Council Member Mary Bess Lawing, the foregoing resolution was adopted by the following vote:

Ayes: Six (6)

Noes: 0

* * * * *

I, Beunice R. Roberts, City Clerk of the City of Newton, DO HEREBY CERTIFY that the foregoing is a true copy of so much of the proceedings of the City Council of the City of Newton, North Carolina, at a regular meeting held on January 19, 2010, as it relates in any way to the passage of resolutions relating to an installment financing agreement for certain vehicles, equipment and improvements to City property and that said proceedings are recorded in the minutes of said City Council.

I DO HEREBY FURTHER CERTIFY that a schedule of the regular meetings of said City Council, stating that the regular meetings of said City Council are held on the first and third Tuesday

of each month at 7:00 p.m. in the City Council Chambers at the City Hall in Newton, North Carolina, has been on file with me for at least seven calendar days prior to said meeting, all in accordance with Section 143-318.12 of the General Statutes of North Carolina.

WITNESS my hand and corporate seal of said City this 19th day of January, 2010.

Robert A. Mullinax, Mayor

Beunice R. Roberts, CMC/City Clerk

RESOLUTION #5-2010

RESOLUTION CALLING A PUBLIC HEARING IN CONNECTION WITH AN INSTALLMENT FINANCING AGREEMENT FOR FINANCING CERTAIN VEHICLES, EQUIPMENT AND IMPROVEMENTS

WHEREAS, the City of Newton, North Carolina (the “City”) is considering entering into an installment financing agreement pursuant to Section 160A-20 of the General Statutes of North Carolina in a principal amount not to exceed \$1,027,500 for the purpose of providing funds, together with any other available funds, to pay the costs of various vehicles, equipment and improvements (the “Project”); and

WHEREAS, in accordance with Section 160A-20(g) of the General Statutes of North Carolina, the City is required to hold a public hearing on such installment financing agreement;

NOW THEREFORE, BE IT RESOLVED that the City Council of the City hereby fixes 7:00 p.m. on February 2, 2010 in the City Council Chambers at the City Hall in Newton, North Carolina, as the hour, day and place for the public hearing on such installment financing agreement and hereby directs the City Clerk of the City to publish notice of such public hearing once in the Observer News Enterprise not later than the 10th day before said date.

Upon motion of Council Member Bill Lutz, seconded by Council Member Mary Bess

Lawing, the foregoing resolution was adopted by the following vote:

Ayes: 6

Noes: 0

* * * * *

I, Beunice R. Roberts, City Clerk of the City of Newton, North Carolina, DO HEREBY CERTIFY that the foregoing is a true copy of so much of the proceedings of the City Council of said City, at a regular meeting held on January 19, 2010, as it relates in any way to the passage of resolutions relating to an installment financing agreement for various vehicles, equipment and improvements and that said proceedings are recorded in the minutes of said City Council.

I DO HEREBY FURTHER CERTIFY that a schedule of the regular meetings of said City Council, stating that the regular meetings of said City Council are held on the first and third Tuesday of each month at 7:00 p.m. in the City Council Chambers at the City Hall in Newton, North Carolina, has been on file with me for at least seven calendar days prior to said meeting, all in accordance with Section 143-318.12 of the General Statutes of North Carolina.

Witness my hand and official seal of said City this January 19, 2010.

Robert A. Mullinax, Mayor

Beunice R. Roberts, CMC/City Clerk

C. Consideration of Underground Electric Utility Improvements:

City Manager Todd Clark reported that the Green Room Community Theatre Inc. is seeking financial assistance from the City to bury utility lines, which run overhead on West A Street, beside of the Old Post Office Playhouse. He said that he had received a letter from Allen Bandy, Jr., Green Room Community Theatre Inc., President-Board of Directors, and Sherry Butler, Executive Director, which explained the utility burial request, as well as, the request of the City to incur the cost of \$6,000.

City Manager Clark referred to a photograph to give a visual of the area showing two poles, one to be taken down and the other pole near the traffic light would remain in place.

Planning Director/ Assistant City Manager Glenn J. Pattishall said that the telephone lines would also go underground and that the Cable lines have already been relocated.

Council Member Mary Bess Lawing said that this would be a big step in putting the lines underground.

Director of Public Works and Public Utilities Wilce Martin said that there were issues in the past with participation in an underground project, but now there is some commitment from AT&T and cable.

After receiving clarification on the status of the Green Room Community Theatre Inc. being a non-profit organization and separate from the City of Newton, Council Member Robert Abernethy, Jr. asked how many other organizations receive a contribution from City.

Mayor Mullinax said that the Green Room Community Theatre Inc. did receive a \$25,000 contribution in the Fiscal Year 2009-2010 Budget; however, the City does contribute to other organizations too.

Council Member Robert Abernethy, Jr. asked if the City had known about the additional \$6,000, would the Council have approved \$31,000. He said that if the Green Room Community Theatre Inc. is going to bury the lines regardless, then why should the City consider spending the taxpayer's money.

Mayor Mullinax said that the Green Room Community Theatre Inc. requested \$50,000 first. He said that the facility is going to be a centerpiece for downtown Newton, but he has some of the same concerns as the Council.

City Manager Clark said that the utility is city-owned and will remain city-owned. He said that Mrs. Butler indicated that regardless of what the Council's decision is that their intent is to bury the lines and incur the full cost - which they were only requesting the City to incur the cost because this is a situation that the Green Room Community Theatre Inc. did not anticipate.

Mayor Pro Tem Anne Stedman asked if the cost of \$6,000 would be to bury the City's utility lines, not AT&T or the cable lines, which City Manager Clark said that was correct. Mayor Pro Tem Stedman said that she felt the \$6,000 would be money well spent and if the Green Room Community Theatre Inc. could negotiate with AT&T and the cable company to bury their lines, then it would be a good deal and a step towards the City's future plans. Council Member Mary Bess Lawing agreed.

Council Member Tom Rowe said that easements would be involved in the underground process and that the Council should find out exactly what the cable company and AT&T have done and the cost involved. He felt that if it is the City's lines, then the City should take care of the putting the City's lines underground.

Council Member Wayne Dellinger said that there are many similar situations with city lines, and questioned how much money would be set aside to do this. He did not want the City to set a precedent.

Director of Public Works & Public Utilities Wilce Martin said that the Green Room, Inc. representatives are working with the Cable Company and AT&T, that it is their responsibility to negotiate with these companies.

Planning Director/Assistant City Manager Glenn J. Pattishall said that AT&T is going to pay for burying its lines.

A question was presented from the audience regarding the \$6,000 cost for the underground project, which was clarified to their satisfaction.

Mayor Mullinax called for a motion on the issue.

A motion was made by Council Member Wayne Dellinger, seconded by Council Member Robert Abernethy, Jr., and unanimously approved to receive firm prices for the underground project and a response of a total cost for the underground cable and AT&T lines, and bring back before the Council at the February 2, 2010 Council meeting.

Mayor Mullinax said that this matter is a time sensitive issue.

ITEM 8. CITY MANAGER'S REPORT:

City Manager Todd Clark reported on the following issues:

- Reported that Rob Powell, Commercial Development Coordinator, has been very instrumental assisting the City to obtain a \$6,310 grant from the Main Street Energy Grant Fund. The funds will be used to retrofit the lighting on the first floor and basement of City Hall. He also reported that the Staff is preparing to make a second application through the Main Street Energy Grant Fund, which is part of the ARRA Program.
- He reminded the Council of several upcoming events. He reported that the Annual Council Planning Workshop would be held in the Council Chambers at City Hall instead of the Newton Depot as previously planned.

ITEM 9. QUESTIONS AND COMMENTS FROM MAYOR AND COUNCIL:

None

ITEM 10. CLOSED SESSION TO CONSULT WITH THE CITY ATTORNEY: G.S. 143-318.11 (a) (5) (i):

Mayor Mullinax stated that the Council needed to have a Closed Session to consult with the City Attorney.

A motion was made by Council Member Wayne Dellinger, seconded by Mayor Pro Tem Anne Stedman, and unanimously approved that the Council go into Closed Session.

After the Closed Session, Mayor Mullinax called the Council meeting back into regular session. No action was taken.

ITEM 12. ADJOURNMENT:

There being no further business to discuss, a motion was made by Mayor Pro Tem Anne Stedman, seconded by Council Member Wayne Dellinger, and unanimously approved that the January 19, 2010 meeting be adjourned.

Respectfully submitted by:

Robert A. Mullinax, Mayor

Beunice R. (Bootsie) Roberts, CMC/City Clerk